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and Null and Void.The County Act is dead. It was
declared wholly null and void by a
unanimous decision of the Supreme
Court, filed at 12 o'clock noon,
Thursday, January 14, at Honolulu.Although the fate of the famous
measure was decided on the single
question of taxation, the Court's
language in waiving consideration
of other points indicates plainly
enough that the Act is honeycombed
with defects more or less "obviously
and imminently dangerous to its
life."The full text of the decision here
follows:In the Supreme Court of the Terri-
tory of Hawaii, October term,
1903.Territory of Hawaii vs. Supervisors
of the County of Oahu.Appeal from Circuit Judge, First
Circuit—Submitted December
30, 1903—Decided January 13,
1904—Frear, C. J., Galbraith
and Perry, J. J.When the valid and invalid parts
of an act are so mutually connected
with or dependent on each other as
to warrant a belief that the Legis-
lature intended them as a whole
and that, if the invalid parts could
not be carried into effect, the Legis-
lature would not pass the valid
parts independently, the whole
must fall.So much of Act 31, Laws of 1903,
known as the County Act, as pro-
vides new features in Territorial
taxation not incidental to county
organization or government, is void
under the provision of Section 45 of
the Organic Act, "that each law
shall embrace but one subject, which
shall be expressed in its
title."Said void portion is such an
essential feature as to vitiate the
whole Act.

OPINION OF COURT BY FREAR, C. J.

This is an appeal from a decree
dismissing a petition for a writ of
quo warranto brought by the Terri-
tory for the purpose of inquiring
by what authority seven named re-
spondents claim to hold office as
Supervisors of the County of Oahu.
The real object of the proceeding is
to test the validity of Act 31 of the
Laws of 1903, known as the County
Act, most of the provisions of which
were to take effect by its terms on
January 4, 1904.If the Act is void, the respon-
dents do not lawfully hold the
offices which they claim to hold
solely under that Act.No question has been raised by
the respondents as to procedure or
jurisdiction, but on the contrary
they seem equally desirous with
the petitioner to have the case de-
cided on the merits.The arguments against the valid-
ity of the Act are in general as fol-
lows:1. That the Act was never
passed by the House of Representa-
tives as required by the provision
in Section 46 of the Organic Act,
that in order to become a law the
final passage of a bill in each house
shall be by a majority vote of all
the members to which such house
is entitled, taken by ayes and noes
and entered on the journal, in that,
as contended, the House journal
shows that the final action in that
body was the adoption of the report
of the conference committee which
recommended certain amendments
and does not show that the bill as
so amended was passed at all by
the House.2. That the Act makes the
County Board of Supervisors an
elective body, contrary to the pro-
vision in Section 80 of the Organic
Act, that the Governor shall ap-
point, with the advice and consent
of the Senate, certain specified offi-
cers and boards and "any other
boards of a public character that
may be created by law."3. That the Act creates a Terri-
torial Board of Equalization consist-
ing of the Secretary, Treasurer and
Auditor of the Territory, not ap-
pointed by the Governor, with the
consent of the Senate, at all as to
one of its members, the Secretary,
nor appointed by him as members
of the board as to any of its mem-
bers, contrary to said Section 80 of
the Organic Act.

4. That the Act requires the

transfer to the counties, to be con-
trolled by various elected county
officials, of much public property
that was ceded by the Republic of
Hawaii to the United States by the
Joint Resolution of Annexation and
was by Section 91 of the Or-
ganic Act placed by the United
States in the possession of the Terri-
tory of Hawaii, to be controlled,
as contended, by various appointive
Territorial officials, "until
otherwise provided for by Congress
or taken for the uses and purposes
of the United States by direction of
the President or of the Governor of
Hawaii."5. That the Act practically
abolishes the offices of Superintend-
ent of Public Works and High
Sheriff by transferring most of their
powers and duties to other officers,
contrary to Section 75 of the Or-
ganic Act, which provides "that
there shall be a Superintendent of
Public Works, who shall have"
certain enumerated powers and
duties, and Section 79 which con-
tains a similar provision in regard
to the High Sheriff.That the whole Act is void be-
cause it contains two subjects, one
in relation to county government
and one in relation to Territorial
works and institutions and because,
as contended, the title of the Act is
likewise correspondingly double, in
contravention of Section 45 of the
Organic Act, which provides "that
each law shall embrace but one
subject which shall be expressed in
its title."7. That so many and such im-
portant portions of the Act are void
and ineffective that none of it can
stand.We will assume for the purposes
of this case that the first six of
these arguments are unsound, and
base our decision on the seventh
alone.In support of this argument a
number of provisions in the Act
were pointed out by counsel as be-
ing, according to their contention,
void or ineffective in whole or in
part for one reason or another.
Without professing on the one hand
to enumerate fully or on the other
to confine ourselves strictly to the
prerogatives advanced by them in
each instance, the general line of
thought on this branch of the case
may be illustrated by the following
statement of arguments: That cer-
tain provisions are void or ineffec-
tive in whole or in part because
they are made to depend upon laws
which were assumed to be still in
force, but which had in fact been
repealed (as, for instance, Sections
454, 455, relating to contested elec-
tions, as shown by In re Election
Contest, ante); or because they
purport to transfer to certain county
or Territorial officers powers and
duties which were assumed to have
been in certain other officers, whose
offices, however, had been abolished
by the Organic Act or whose duties
had been transferred either by the
Organic Act or by our own laws to
other officers (as, for instance, Sec-
tions 365, 394, which purport to
transfer to other officers the powers
and duties of the Minister of the
Interior relating to medicine, sur-
gery, pharmacy, dentistry and
prisons); or because they relate to
purely Territorial matters in contra-
vention of the provision of the Or-
ganic Act that each law shall em-
brace but one subject which shall
be expressed in its title (as, for in-
stance, Sections 380-391, 483-487,
494, relating to the Territorial
Board of Public Institutions, as
shown in Dole vs. Cooper, ante);
or because of two or more of the
foregoing reasons (as, for instance,
Sections 395-401, 495, 496-501,
which place the Territorial peni-
tentiary in the control of the Terri-
torial Board of Public Institutions
and provide for a transfer of pow-
ers and duties from the Minister of
the Interior—not to go into the
question whether the subject of a
Territorial penitentiary itself could
properly be included in the Act or
how far the matters of prisons,
criminal procedure, sentences, etc.,
in general might be affected by the
failure of the provisions in ques-
tion); or because they purport to
alter laws that cannot be altered at
all by the Territorial Legislature,
the power to alter which is reserved
exclusively to Congress by the Or-
ganic Act (as, for instance, Sections171-172, 450-451, relating to the
settlement of boundaries and the
returns, canvass and certificates of
election in the case of Territorial
Senators and Representatives—not
to consider whether the latter sub-
ject could properly be included in a
county act at all); or because they
violate provisions of the Organic
Act or other Acts of Congress re-
lating to the Territories prohibiting
special legislation in regard to
counties, as, for instance, the pro-
viso of Section 1 relating to the
County of Kalawao, and Section 14
relating to the Supervisors of the
County of Oahu.But we will assume for the pur-
poses of this case either that all
such provisions are valid and effec-
tive, except so far as held otherwise
in the cases above mentioned, or
else, that, if invalid or ineffective,
they may, important though some
of them are, all fall without causing
the Act as a whole to fall.There is, however, one subject
that, in our opinion, is improperly
included in the Act, without the
provisions in regard to which it
cannot be presumed that the Legis-
lature would have passed the rest
of the Act. That is the subject of
Territorial taxation—the very means
upon which the Territorial govern-
ment depends for its life. We will
assume that the Territorial Board
of Equalization might properly be
constituted as it is in terms by this
Act, notwithstanding the provisions
of Section 80 of the Organic Act.
Still the subject of Territorial taxa-
tion is one that, like the subject of
the Territorial Board of Public In-
stitutions, cannot be included in the
Act, in view of the provisions of
Section 45 of the Organic Act relat-
ing to titles of laws.The Act makes radical changes
in the system of Territorial taxa-
tion. It may almost be said to pro-
vide a new system. Among other
things, it provides for the equaliza-
tion of valuations of real property
among the several counties, as far
as regards the Territorial tax, by a
purely Territorial Board. This
board also is required to determine
the rate of the Territorial tax upon
both real and personal property,
and in case of its failure to do so,
the rate is fixed at five mills on the
dollar. Sections 186, 221, 222.The Act is entitled "An Act Pro-
viding for the Organization and
Government of Counties and Dis-
tricts, and the Management and
Control of Public Works and
Public Institutions therein." An
Act relating to taxation could cover
both Territorial and county taxa-
tion. Whether an act relating to
Territorial government could prop-
erly cover county government, or
an act relating to Territorial taxa-
tion could properly cover county
taxation might be a question—al-
though under an act which accord-
ing to its title related to state and
county revenues, but which con-
tained a section on municipal re-
venues, the Supreme Court of Ten-
nessee held not only that section,
but the entire act void. See Bugher
vs. Prescott, 23 Fed. 20. But an
act relating to county taxation or
county government could not cover
Territorial taxation. No doubt a
number of provisions in this Act
could be sustained, not as parts of
the Territorial system of taxation,
but as incidental to county govern-
ment, although they relate more or
less to what were previously parts
of the Territorial system of taxa-
tion. An act relating to counties
created in a fully organized Terri-
tory with a centralized government
would naturally and probably ne-
cessarily contain some such provi-
sions. Lines of demarcation and
transfers would have to be made
and this could be done by inclusion,
exclusion, amendment or repeal so
far as necessary for the purposes of
providing for the organization and
government of counties. But this
Act goes much further than this.
It provides for most important
changes in the system of Territorial
taxation, and that, too, with noth-
ing in the title of the Act to indi-
cate this.What is the result? The provi-
sions relating to county and terri-
torial taxation covering nearly a
fourth of the entire Act, are inter-
woven, and were intended to be

(Continued on page 6.)

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